



Photo credit: The Kansas City Star, [www.kansascity.com](http://www.kansascity.com)

# The MA Wetlands Regulations & the MA Contingency Plan

MASSACHUSETTS DEPARTMENT  
OF ENVIRONMENTAL  
PROTECTION



# Introduction

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- Purpose of the MA Contingency Plan
- Overview of Wetlands Regulations
- Review specific regulatory requirements that pertain to the Massachusetts Contingency Plan (310 CMR 40)
  - Emergencies
  - Permitting
  - Next steps

# Massachusetts Contingency Plan *(310 CMR 40)*

The purposes of the Massachusetts Contingency Plan are, without limitation, to:

(a) provide for the protection of health, safety, public welfare and the environment

(b) encourage persons responsible for releases and threats of release of oil and/or hazardous material to undertake necessary and appropriate response actions in a timely way;

(c) focus government resources on those sites at which the person(s) responsible can not or will not undertake necessary response actions;

(d) focus government resources on those sites at which Department oversight is necessary to ensure that response actions are protective of health, safety, public welfare and the environment;

(e) establish a program for the Department to issue Tier I Permits to persons seeking to carry out response actions at Tier I disposal sites; and

(f) establish a program for the Department to audit a sufficient number of response actions not overseen or conducted by the Department to ensure that those response actions are performed in compliance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws.

# Massachusetts Wetlands Protection Act (WPA) and Regulations

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THE ACT: MASS. GENERAL LAWS,  
CHAPTER 131, SECTION 40



THE REGULATIONS: 310 CMR  
10.00

# 310 CMR 10.01(2) Purpose of the WPA

Protection of public and private water supply

Protection of ground water supply

Flood control prevention

Storm damage prevention

Prevention of pollution

Protection of land containing shellfish

Protection of fisheries

Protection of wildlife habitat



## Areas Subject to Protection (310 CMR 10.02):

(a) Any bank, freshwater wetland, beach, dune, flat, marsh or swamp BORDERING the ocean or any estuary, creek, river, stream, pond or any lake;

(b) Land under any of the water bodies listed above

(c) Land subject to tidal action

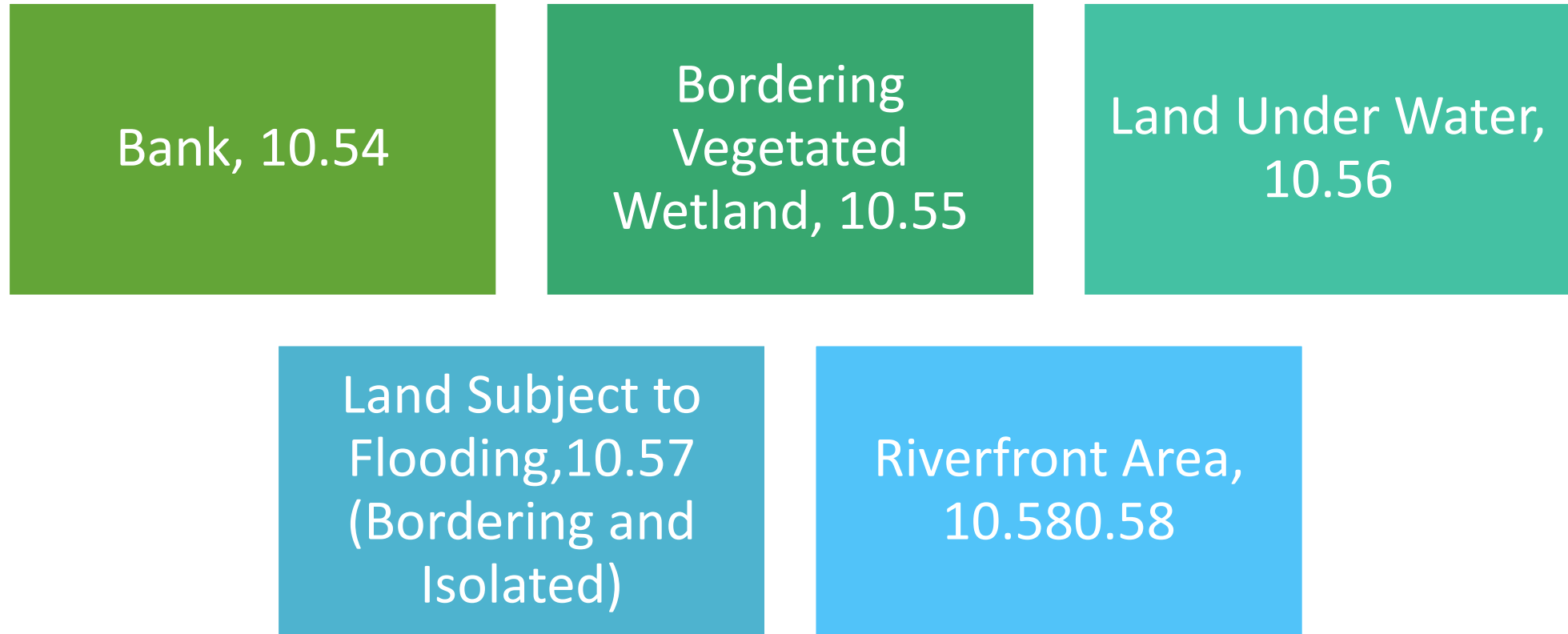
(d) Land subject to coastal storm flowage

(e) Land subject to flooding

(f) Riverfront area

# Inland Wetlands (Freshwater)

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## Riverfront Area

- 200 feet from a perennial river or stream
- measured horizontally from mean annual high-water level
- Does not have a buffer zone
- Is a wetland resource area





# Coastal Wetlands

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Salt marsh

Beach

Dune

Coastal Bank

Flat (mud flat)

Land Under the Ocean

Land Subject to Coastal Storm Flowage

Salt Marsh



Coastal Dunes



# Buffer Zone

Buffer Zone: land extending 100 feet horizontally outward from the boundary of any BVW, inland bank, coastal bank, coastal beach, dune or flat.



- MassMapper layers

<https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>

- Historic aerials
- Don't forget "DEP Wetlands Linear Features"
- Helpful MassMapper Layers
- Local GIS data
- Previous delineations on this or adjacent parcels?



- [Property Tax Parcels Map Par Id Black Labels](#)
- [Property Tax Parcels](#)
- [Census 2020 Environmental Justice Populations](#)
- [DFW Coldwater Fisheries Resources](#)
- [DEP Wetlands Linear Features](#)
- [DEP Wetlands Detailed](#)
- [DEP Wetlands Change](#)
- [Outstanding Resource Waters](#)
- [Q3 Flood Zones \(from Paper FIRMs, where NFHL Unavailable\)](#)
- [FEMA National Flood Hazard Layer](#)
- [Areas of Critical Environmental Concern ACECs](#)
- [NHESP Priority Habitats of Rare Species](#)
- [NHESP Estimated Habitats of Rare Wildlife](#)
- [NHESP Certified Vernal Pools](#)
- [1990s Black and White Aerial Imagery](#)
- [2001 Aerial Imagery](#)
- [2005 Aerial Imagery](#)
- [2008/2009 Aerial Imagery](#)
- [2011-2012 Aerial Imagery](#)
- [2013-2014 Aerial Imagery](#)
- [2019 Aerial Imagery](#)
- [2021 Aerial Imagery](#)
- [USGS Topographic Maps](#)

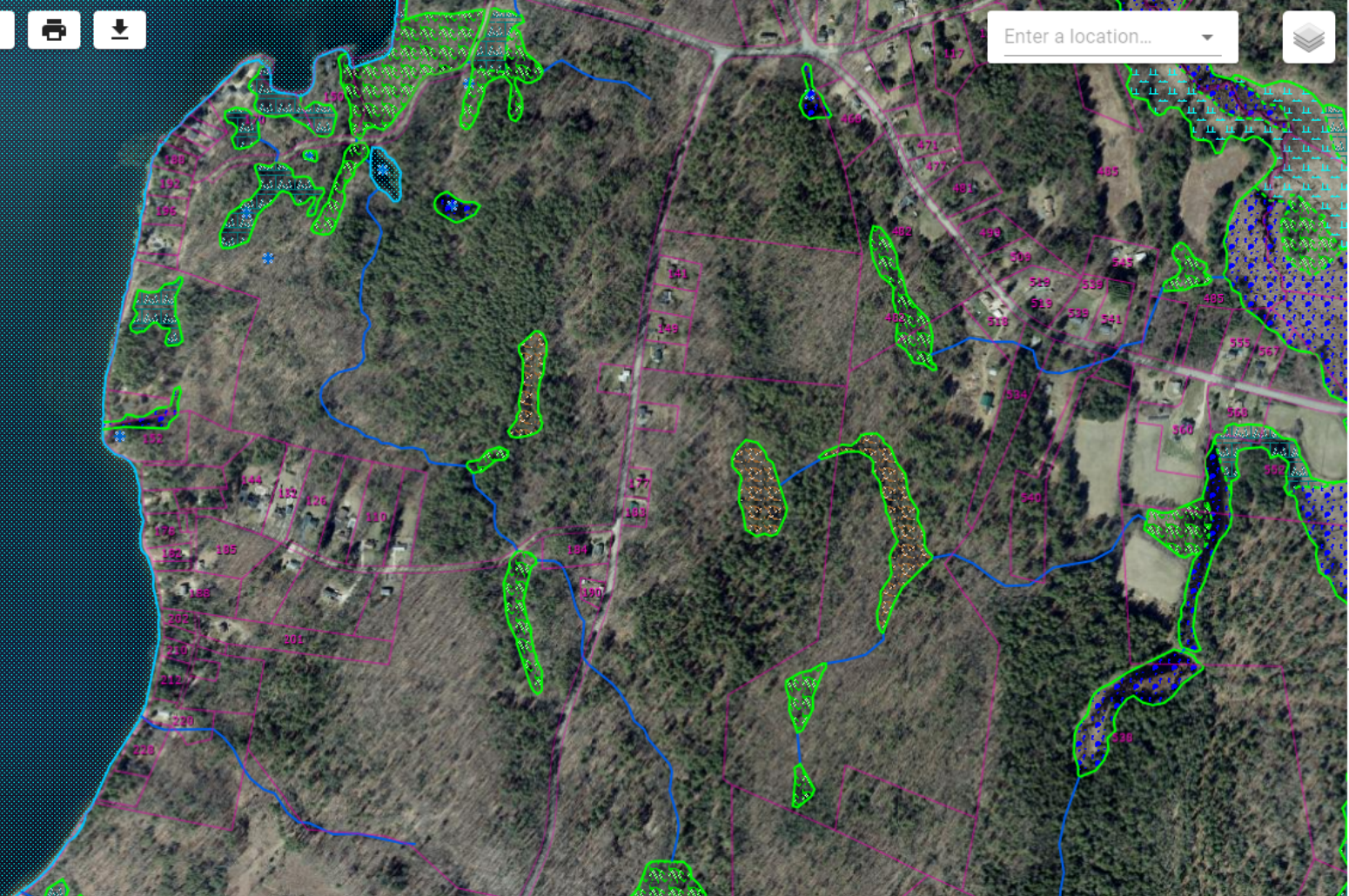


Enter a location...



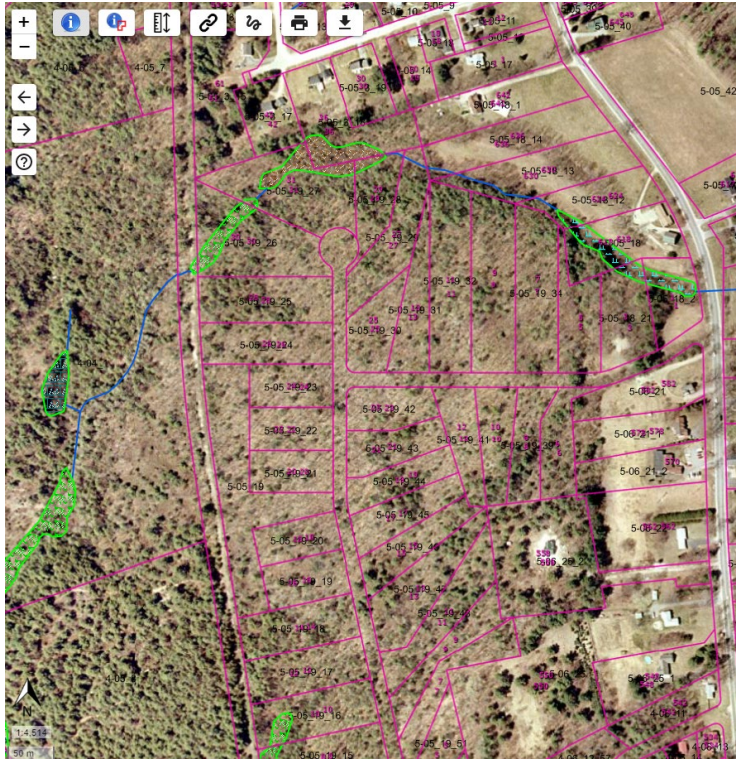
Search for a layer

- > Census
- > Coastal and Marine Features
- > Conservation / Recreation
- > Cultural Resources
- > Environmental Monitoring (testing/monitoring sites)
- > Images
- > Index (grids/tiling schemes for certain layers)
- > Infrastructure
- > Physical Resources
- > Political / Administrative Boundaries
- > Regulated Areas
- > Status / Availability (maps showing where data is available or date of data)
- > Tiled Layers



- [Zone A](#)
- [Property Tax Parcels](#)
- [Property Tax Parcels Map Par Id Black Labels](#)
- [DEP Wetlands Linear Features](#)
- SHORELINE
- HYDROLOGIC CONNECTION
- MEAN WATER LINE
- APPARENT WETLAND LIMIT
- CLOSURE LINE

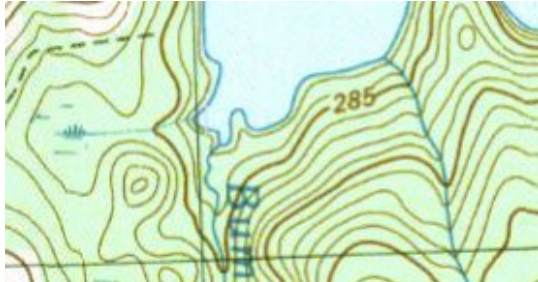
# MassMapper Layers: DEP Wetlands Linear Features and DEP Wetlands Detailed



# MassMapper: Historical Aerials

# Topographic Maps

MassMapper/Paper (1983)



USGS National Map (Current)



USGS TopoView (2021)

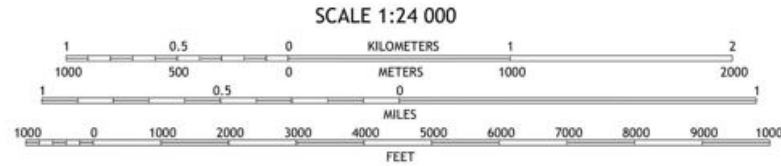
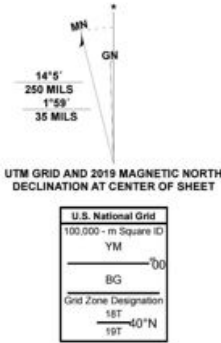


**Produced by the United States Geological Survey**

North American Datum of 1983 (NAD83)  
 World Geodetic System of 1984 (WGS84). Projection and  
 1 000-meter grid: Universal Transverse Mercator, Zone 18T.19T  
 This map is not a legal document. Boundaries may be  
 generalized for this map scale. Private lands within government  
 reservations may not be shown. Obtain permission before  
 entering private lands.

Imagery.....NAIP, July 2016 - September 2016  
 Roads.....U.S. Census Bureau, 2018  
 Names.....GNIS, 1974 - 2018  
 Hydrography.....National Hydrography Dataset, 2004 - 2015  
 Contours.....National Elevation Dataset, 2012  
 Boundaries.....Multiple sources; see metadata file 2016 - 2017

Wetlands.....FWS National Wetlands Inventory 2008



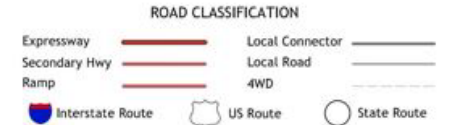
SCALE 1:24 000  
 CONTOUR INTERVAL 10 FEET  
 NORTH AMERICAN VERTICAL DATUM OF 1988  
 This map was produced to conform with the  
 National Geospatial Program US Topo Product Standard.



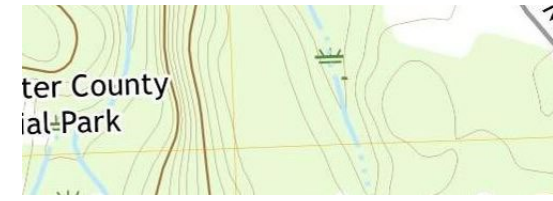
QUADRANGLE LOCATION

1	2	3
4	5	6
7	8	

ADJOINING QUADRANGLES



**PAXTON, MA**  
 2021





# Activities Subject to Regulation

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Except for minor activities, ANY activity proposed or undertaken within an area specified in 310 CMR 10.02 (1) (all wetland areas listed) and which will remove, fill, dredge, alter that area... requires the filing of a Notice of Intent.

## Alter: change the condition of



change drainage characteristics, flushing, salinity, flow pattern, sedimentation patterns, etc.



lowering water level



destruction of vegetation



change in water temp, BOD, other physical, biological or chemical characteristics of receiving water



are not  
subject to  
jurisdiction....

UNLESS and  
UNTIL that  
activity alters  
a wetland.

Activities Outside Jurisdiction

# Minor activities/exemptions for work in Buffer Zone\*

Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes, such as

- installation of monitoring wells
- exploratory borings
- sediment sampling
- surveying

\*BZ ONLY. If within a resource area, then the activity is not minor nor exempt





Are there wetland resource areas on the site or within 100 feet of the site?



Is there a perennial river within 200ft?



Will the work dredge, fill, remove or alter a wetland resource area?



Access possible without a wetland crossing?

# 10.06 Emergencies



Request must specify what agency of the state or town will perform the project or has ordered the work.

Only for public health/safety.

Emergency work not to exceed 60 days for approved Immediate Response Action (IRA)

MassDEP may, on its own or at the request of any person, review any certificate that is approved by the local Conservation Commission or denied, or if the Conservation Commission fails to act within 24-hours.

Only to abate the emergency.

# 10.06 Emergencies – Immediate Response Actions



(7) Notwithstanding any other requirements, IRAs receiving oral approval from BWSC to 310 CMR 40.0420(2), or initiated up to 24 hours prior to notification to and oral approval by BWSC pursuant to 310 CMR 40.0420(7) and (8), may commence before requesting the conservation commission to issue an emergency certification under 301 CMR 10.06, so long as the request is made within 24 hours after the BWSC has orally approved the commencement of the IRA.

# 10.06 Emergencies – Immediate Response Actions Continued



Once a request for emergency certification has been made pursuant to 310 CMR 10.06(7), work that commenced before such filing may continue pending a decision on the request by the conservation commission.

Such work may also continue pending a decision on a request for DEP review UNLESS the request has not been filed with the DEP within one business day of: issuance by the local Conservation Commission of the emergency certification; Conservation Commission denial of the emergency certification; or failure by a Conservation Commission to act within 24 hours of a request for emergency certification.

# Permitting Procedures

Determination of  
Applicability

ANRAD

Notice of Intent

Fees





# Notice of Intent

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Any person who proposes to do work that will remove, fill, dredge or alter any Area Subject to Protection under M.G.L. Ch. 131, §40 shall file a Notice of Intent...



# Limited Projects Provisions

*310 CMR 10.53(3)(q)*

- There are no practicable alternatives that are consistent with the provisions of 310 CMR 40.0000 AND that would be less damaging to the resource areas...
- Assessment, monitoring, containment, mitigation, and remediation of, or other response to, a release or threat of release of oil and/or hazardous material in accordance with the provisions of 310 CMR 40.0000
- No such measure may be permitted which is designed in accordance with the provisions of 310 CMR 40.1020 solely to reduce contamination to a level lower than that which is needed to achieve “No Significant Risk” as defined in 310 CMR 40.0006(10)
- Alternative analysis required

# 310 CMR 10.53(3)(q) Alternatives Analysis

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Shall include, but is not limited to,

- alternative that does not alter wetland, which will provide baseline data for evaluating other alternatives;
- an assessment of alternatives to both temporary and permanent impacts to wetlands...

# Limited Projects Provisions Continued

*310 CMR 10.53(3)(q)*

- A “Comprehensive Remedial Action Alternative” that meets MCP shall be deemed to have met the requirements of the 310 CMR 10.53(q)(1); and...
- Such projects shall be designed, constructed, implemented, operated, and maintained to avoid or, where avoidance is not practicable, to minimize impacts to resource areas;
- and shall meet the following standards to the maximum extent practicable:

# Maximum Extent Practicable

*under 310 CMR 10.53(3)(q)*

hydrological changes minimized

BMPs to prevent erosion

mitigating measures that contribute to the protection of wetland interests

compensatory flood storage required

no restriction of flows & no increase in flood stage or velocity...

temporary structures/roads removed within 30 days of completion

substantial restoration of resource areas (75% in 2 years)

work in resource areas only when ground is frozen, dry or otherwise stable.

# 10.03(7) Fees

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- Installation of monitoring well
- Any activity associated with the cleanup of hazardous waste, except as otherwise noted in Category 4, including excavation, destruction of vegetation, change in subsurface hydrology, placement of collection wells or other structures for collection and treatment of contaminated soil and/or water.
- Any alteration of a resource area to divert water for the clean up of a hazardous waste site.
- Any activities, including the construction of structures, associated with the assessment, monitoring, containment, mitigation, and remediation of, or other response to, a release or threat of release of oil and/or hazardous material reviewable under 301 CMR 10.53(3)(q).

# Appeals

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10.05(7) Request for Actions by the  
Department (Superseding  
Determinations, SOCs)

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310 CMR 1.00 Adjudicatory  
Proceedings

# Additional Procedural Regulations

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10.05 (8) Extensions of Orders of  
Conditions

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10.05 (9) Certificates of Compliance



# More information? Project specific questions?

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- **MassDEP Regional Offices and Website:**

<https://www.mass.gov/orgs/massachusetts-department-of-environmental-protection>

- **Call your MassDEP Circuit Rider:**

<https://www.mass.gov/info-details/massdeps-wetlands-circuit-rider-program>

- **Local Conservation Commission**

- **Association of Massachusetts Wetland Scientists**